GOLDEN ROCK SDN BHD v. MAYBAN FINANCE BHD

COURT OF APPEAL, PUTRAJAYA
MARIANA YAHYA JCA
CHOO KAH SING JCA
FAIZAH JAMALUDIN JCA
[CIVIL APPEAL NO: J-02(NCVC)(W)-855-05-2022]
25 AUGUST 2025

Abstract – *The statutory Form 75 under s. 514(1) of the Companies Act 2016, filed by a liquidator, is an account of the liquidator's receipts and payments of money and a statement of the cash position in the winding-up company. Form 75 would not reveal the indebtedness as it is not a full set of accounts reflecting the fixed and current assets and liabilities of the winding-up company. The best evidence to prove indebtedness is the certificate of indebtedness.*

LAND LAW: *Foreclosure proceedings – Order for sale – Borrower defaulted in credit facility and company wound-up – Whether debts owing fully settled – Statutory Form 75 showing surplus balance sum – Whether Form 75 full statement of account – Whether Form 75 account of liquidator's receipts and payments of money and statement of cash-position in winding-up company – Whether certificate of indebtedness conclusive proof of indebtedness – Whether reliance on statutory Form 75 misconstrued – Companies Act 2016, s. 514(1)*

The appellant, the registered proprietor of two pieces of land, charged its properties to the respondent, and stood as a third-party chargor for a revolving credit facility granted to one Senai Besar Development Sdn Bhd ('borrower') by the respondent. The borrower defaulted in its repayments of the credit facility. The respondent took out a foreclosure action on the appellant's properties, and an order for sale was granted by the court against the appellant's properties. The order for sale, however, could not be effected because the appellant had launched numerous legal challenges against the granting of the order for sale. In the midst of the litigation process challenging the order for sale, the borrower went into liquidation and was subsequently wound-up. The appellant sought before the High Court for, *inter alia*, an order to set aside the order for sale. The appellant relied on the information that was lodged by the liquidators in a statutory Form 75 (Liquidators' Account of Receipts and Payments and Statement of the Position in the Winding-up) which stated that the borrower's account had a surplus balance sum. The Form 75 did not show there was any outstanding amount owing to the respondent. The appellant contended that all the debts owing to the respondent by the borrower had been fully settled, and that the respondent's properties were not liable for foreclosure proceedings and ought to be

A discharged and returned to the appellant. The High Court dismissed the appellant's claim. Dissatisfied with the decision of the High Court, the appellant filed the present appeal.

Held (dismissing appeal)
Per Choo Kah Sing JCA delivering the judgment of the court:

B

(1) The appellant had misconstrued the object of Form 75 and had misinterpreted the contents of the statement in Form 75 lodged by the liquidators. It is not necessarily true that if Form 75 exhibits a surplus balance in the winding-up company, that means that the winding-up company is not in debt. A statutory Form 75 under s. 281 of the Companies Act 1965 is not a full statement of account like an audited account report. It is an account of the liquidator's receipts and payments of money and a statement of the cash-position in the winding-up company. The Form 75 exhibited by the respondent would not reveal the indebtedness of the borrower or the appellant to the respondent; they merely reflected the money receipts and payments of the borrower's account kept by the liquidator. The best available evidence to prove that the appellant or the borrower was and still indebted to the respondent was the production of a certificate of indebtedness. (paras 6, 10, 11 & 18)

C

D

E

(2) The appellant's submissions, that attempted to raise new issues over and above what had been addressed by the trial court, was rejected. Further, the appellant's contention was only in relation to the interpretation of Form 75, not the correctness of the certificate of indebtedness. Hence, the trial judge had merely confined the appellant's questions within the parameters of the interpretation, correctness and implication of Form 75. If questions were allowed to be asked pertaining to the outstanding amount owing to the respondent, it would indirectly allow a back-dock challenge to the certificate of indebtedness. (paras 15 & 16)

F

G

Case(s) referred to:
Cempaka Finance Bhd v. Ho Lai Ying & Anor [2006] 3 CLJ 544 FC ***(refd)***

Legislation referred to:
Companies Act 1965, s. 281

For the appellant - T Gunaseelan, Keshvinjeet Singh & Kumaradevan Rajadevan; M/s Gunaseelan & Assocs

H

For the respondent - Hoi Jack S'ng & Tiffany Low Jia Qi; M/s Lee Hishammuddin Allen & Gledhill

[Editor's note: For the High Court judgment, please see Golden Rock Sdn Bhd v. Maybank Finance Bhd [2022] CLJU 1667; [2022] 1 LNS 1667 (affirmed).]

I *Reported by S Barathi*

JUDGMENT

Choo Kah Sing JCA:

Introduction

[1] The appellant, Golden Rock Sdn Bhd, was the registered proprietor of two pieces of land ("the appellant's properties"). The appellant charged its properties to the respondent and stood as a third-party chargor for a revolving credit facility ("the credit facility") granted to one Senai Besar Development Sdn Bhd ("the borrower") by the respondent. The borrower defaulted in its repayments of the credit facility. The respondent took out a foreclosure action on the appellant's properties, and an order for sale (amended) dated 8 August 2003 ("the order for sale") was granted by the court against the appellant's properties. The order for sale could not be effected because the appellant had launched numerous legal challenges against the granting of the order for sale. In the midst of the litigation process challenging the order for sale, the borrower went into liquidation and was wound-up on 7 July 2006.

[2] The appellant contended that all the debts owing to the respondent by the borrower had been fully settled, and that the respondent's properties were not liable for foreclosure proceedings and ought to be discharged and returned to the appellant. The appellant sought before the High Court for, *inter alia*, an order to set aside the said order for sale. On 24 April 2022, the High Court dismissed the appellant's claim. Dissatisfied with the decision of the High Court, the appellant appealed to the Court of Appeal.

[3] On 10 January 2025, this court, after having considered the respective parties' counsels' submissions, orally and in writing, dismissed the appellant's appeal and affirmed the High Court's decision. The reasons for this court's decision are set out as below.

The Appellant's Contention

[4] The appellant contended that the borrower no longer owed the respondent any outstanding sum, as such, the appellant's properties were no longer liable to be foreclosed in the third-party charge. The appellant relied on the information that was lodged by the liquidators in a statutory Form 75 (liquidators' account of receipts and payments and statement of the position in the winding-up) dated 16 April 2016 ("the said Form 75") which stated that the borrower's account had a surplus balance sum of RM4,819,854.24. The said Form 75 did not show there was any outstanding amount owing to the respondent as of 16 April 2016. As such, the order for sale obtained by the respondent to auction off the appellant's properties ought to be set aside, the appellant contended.

A **Analysis And Findings Of This Court**

[5] It is instructive to note that the appellant had challenged the order for sale on several occasions in the past, but to no avail. Ultimately, an order for directions for sale *via* public auction was granted, and an auction date was fixed on 4 June 2018. However, the appellant successfully stayed the auction
B proceeding by obtaining an *ad interim* injunction pending the disposal of the appellant's action, including the appeal here. The action was filed first by way of an originating summons but was subsequently converted to a writ action.

C **[6]** The entirety of the appellant's contention is premised on the information lodged by the liquidators in Form 75 (dated 16 April 2016) which suggested that there was no outstanding debt owed by the liquidated borrower company. This court finds the appellant has misconstrued the object of Form 75 and has misinterpreted the contents of the statement (Form 75) lodged by the liquidators.

D **[7]** Ms Khoo Pek Ling (DW2), one of the two liquidators who executed the Form 75, testified in court. DW2 explained that the respondent's claim had not been fully settled. The learned trial judge (who has retired) in his grounds of judgment remarked as follows:

E [16] The Defendant submits that the documentary evidence, *ie*, the three (3) proof of debts ("POD") filed by the Defendant, shows clearly that the indebtedness has not been settled.

The three (3) PODs filed are:

(i) POD 1, for the sum of RM1,842,156.86;

F (ii) POD 2, for the sum of RM7,890,954.74; and

(iii) POD 3 for the sum of RM659, 732.49, all totaling RM10,392,844.09.

[17] The Liquidator admitted PODs 1 and 3 in full and admitted POD 2 in part in the sum of RM7,455,192.66, totalling
G RM9,957,082.01.

[18] On 17.3.2016, the Liquidator paid the Defendant the sum of RM1,962,318.36 from the redemption sum received by the Liquidator for the discharge of ninety-three (93) properties belonging to the Borrower and charged to the Defendant. The sum
H was utilized towards settlement of POD 1.

[19] Although DW2 was cross-examined aggressively by the Plaintiff's solicitors, she was steadfast in her contention that the Form 75 submitted by her did not disclose that the loan to the Borrower has been fully settled. Her view was that the Plaintiff had misconstrued the contents and implications of the Form 75.

I

I found DW2 to be credible and truthful witness, and I accept her evidence. DW2, being an officer appointed by the court, has no reason to lie to this Court, and there is no evidence or allegation that she stands to gain any benefit by giving false evidence to this Court.

Additionally, if the contention of the Plaintiff is that the debt of the Borrower has been fully settled, surely the shareholders or directors of the Borrower would have applied for the winding-up of the Borrower to be lifted, since the Borrower would now be a solvent company. This, however, has not been done to date.

[20] The fact that neither the shareholders nor directors have applied for the winding-up order to be lifted when the Form 75 dated 16.04.2016 was filed with the Suruhanjaya Syarikat Malaysia (SSM) in the year 2016 is an indication that the debt by the Borrower to the Defendant still remains unsatisfied.

Therefore, I find on a balance of probabilities, that the Plaintiff has failed to prove that the debt of the Borrower to the Defendant has been fully satisfied, much less that there is an excess of funds in the hands of the Liquidator.

[8] The above finding of the learned trial judge was based on the documentary and oral evidence of DW2. DW2 was one of the deponents of the statutory declaration verifying liquidators' account and statement and was also one of the makers of Form 75. DW2 testified that there were three proofs of debts forms (PODs) filed by the respondent, and that the PODs had been admitted by the liquidators, with one partially admitted. However, the entire admitted debt had not been fully satisfied. DW2 was the best person to verify and explain the contents and implication of Form 75 to the court, and it is equally true that DW2 was the best person to verify the financial standing, particularly the overall indebtedness of the borrower. The appellant's own witnesses also agreed that the best person to explain the contents of Form 75 was the liquidator(s).

[9] The learned trial judge concluded that Form 75 did not indicate any conclusive evidence to suggest the borrower had fully satisfied the outstanding debt with the respondent. The learned trial judge had the benefit of seeing and observing the demeanour of the witness which this court does not have. As such, there is no reason for this court to interfere with the fact-finding and decision of the trial judge pertaining to DW2's evidence. This court could not see any obvious error in the finding of facts or that the trial judge's reasons in coming to the decision pertaining to the evidence of DW2 was plainly wrong.

[10] The respondent (or Malayan Banking Berhad now) produced a certificate of indebtedness/statement of account as of 15 July 2019 stated that there was a total outstanding sum of RM24,749,569.45 as of 15 July 2019 owing by the appellant to the respondent after having taken into account

payment received from the liquidators on 11 July 2019 totalling RM3,503,940.55. The certificate of indebtedness is sufficient to prove that the appellant was indebted to the respondent as of 15 July 2019. This court observes that all of the Form 75 in the appeal records merely reflect the money receipts and payments of the borrower's account kept by the liquidator. A statutory Form 75 is not a full statement of account like an audited account report. It is an account of the liquidator's receipts and payments of money and a statement of the cash-position in the winding-up company as required in s. 281 of the Companies Act 1965 (the old law). The liquidator was required to lodge with the Registrar and the official receiver in the prescribed form and verified by a statutory declaration of the receipts and payments of the winding-up company at the interval of every six months. The Form 75 exhibited by the respondent would not reveal the indebtedness of the borrower or the appellant to the respondent. Hence, the best available evidence to prove that the appellant or the borrower was and still is indebted to the respondent is the production of a certificate of indebtedness (see *Cempaka Finance Bhd v. Ho Lai Ying & Anor* [2006] 3 CLJ 544; [2006] 2 MLJ 685, 691, para. [11]).

[11] The appellant's counsel submitted that DW2's testimony contradicted her own statements in Form 75. This court, after having scrutinised DW2's testimony and the statements of Form 75, finds no contradiction in the sense that, as mentioned above, the statements in Form 75 merely reflect the receipts and payments of money of the borrower's account, and they do not reflect the indebtedness of the borrower to the respondent. Page [4] of the Form 75, item (1) refers to the "the amount of the estimated assets and liabilities at the date of the commencement of the winding-up"; and, in reference to the part of the liabilities of the borrower, it stated "to be determined". Likewise, in item (5) – "Estimated amount of debts or claims remaining for proof", it stated "to be determined". These show that the actual indebtedness of the borrower had yet to be finalised or determined. Form 75 is merely a record or statement showing only the money receipts and payments of the borrower from time to time. Obviously, the balance in the receipts and payments ledger would not reveal any indebtedness of the borrower.

[12] The appellant's counsel raised another issue which was that the guarantor to the credit facility, Soh Poh Sheng, was discharged from being a bankrupt because the Federal Court (in Civil Appeal No. 03-4-10-2020(J)) had set aside the bankruptcy order against him for the reason that the borrower had paid off its debt based on the information reflected in Form 75 (the same Form 75 here).

[13] The respondent's counsel submitted that the question of law raised and answered by the Federal Court is as follows:

Whether Form 75 under Section 514(1) Companies Act 2016 which is filed by the Liquidator and supported by a Statutory Declaration can be received as *prima facie* evidence of its contents.

The Federal Court answered in the affirmative. Although there are no grounds for the decision of the Federal Court, this court takes cognisance of the ruling of the Federal Court.

[14] Notwithstanding that the question of law has been answered in the affirmative by the Federal Court, this court is of the view that the *prima facie* evidence has been rebutted by DW2 in the appellant's case. In *Soh Poh Sheng*'s case, neither DW2 or Ooi Chee Kun (the other liquidator) was called to explain the contents, purpose and implication of Form 75. Therefore, in coming to its decision, the Federal Court did not have the benefit of the evidence of the liquidators to explain the contents, purpose and implication of Form 75. Further, the trial judge and this court do not have the benefit of the written grounds of the decision of the Federal Court. The trial judge rightly declined to follow the outcome of *Soh Poh Sheng*'s case. Likewise, this court finds that even if the contents of Form 75 are received as *prima facie* evidence of its contents, the *prima facie* evidence has to be in relation to the money receipts and payments of the borrower. With regards to the appellant's contention that the borrower does not owe the respondent, this contention has been rebutted through the testimony of DW2.

[15] This court observes that at the court below, there were only two issues before the trial court, namely, (i) whether the debt owing by the borrower had been fully settled by the liquidator of the borrower; and (ii) whether the plaintiff's application to set aside the order for sale dated 8 August 2003, is barred by the principle of *res judicata*. Before this court, the appellant's counsel's submissions attempted to raise new issues over and above what had been addressed by the trial court. For example, the appellant accused the respondent and DW2 of having fabricated the PODs, and alleged DW2 had failed to call meetings of creditors and contributories before distributing the dividends, *etc*. The appellant's counsel in his submissions launched an attack against the integrity of DW2 as a liquidator which this court finds repulsive. As DW2 was not brought in as a party to the litigation, she could not defend such accusations against her. Hence, this court rejects the appellant's counsel's submissions pertaining to the complaints against DW2 in her conduct as the liquidator of the borrower.

[16] The appellant's counsel also complained that the trial judge did not allow the appellant's counsel to cross-examine the respondent's first witness, Cheah Eng Huat (DW1), pertaining to the outstanding amount owing to the respondent. The crux of the appellant's case was centred on the contention that there was no outstanding amount owing by the borrower to the respondent relying on the statements in Form 75. The trial judge had merely confined the appellant's counsel's questions within the parameters of the

A interpretation, correctness and implication of Form 75. If the trial judge were to allow questions to be asked pertaining to the outstanding amount owing to the respondent, this would indirectly allow a back-dock challenge to the certificate of indebtedness which was not the contention of the appellant. The appellant's contention was only in relation to the interpretation of Form 75, not the correctness of the certificate of indebtedness.

[17] The issue before the trial court was straightforward. The issue was whether the appellant's interpretation of Form 75 was correct, namely that Form 75 did not state the indebtedness of the borrower with the respondent, and that there was a surplus amount of money in the account, therefore, the appellant owes no liability to the respondent. The trial court accepted DW2's evidence and decided the appellant's interpretation and understanding of the contents of Form 75 was misconceived and wrong. The appellant's case centred on its own interpretation of Form 75. It was for this reason that the trial judge had limited the line of questions posed to DW1 by the appellant's counsel. This court finds that the trial judge did not commit any error in confining the cross-examination of DW1 to the issue before him.

[18] This court is of the view it is not necessarily true that if Form 75 exhibits a surplus balance in the winding-up company, that means that the winding-up company is not in debt. Form 75 is not a full set of accounts reflecting the fixed and current assets and liabilities of the winding-up company. The appointed liquidator is the best person to know whether the winding-up company is or is not indebted to any party who claims against the winding-up company.

[19] Based on the above reasoning, this court finds the trial judge did not err in his findings of fact and the application of the law in coming to his decision to dismiss the appellant's case, and that the decision of the trial judge does not warrant an interference of this court, as there is nothing plainly wrong.

Conclusion

[20] For the above reasons, this court, in a unanimous decision, dismissed the appellant's appeal on 10 January 2025 and ordered the appellant to pay costs of RM10,000 (subject to allocator) to the respondent. The High Court's order dated 24 April 2022 is affirmed.